

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Willie Frank Williams,

Plaintiff,

Hon. Hugh B. Scott

11CV459S

v.

Decision
& Order

Chief Alice C. Haskins et al.,

Defendant.

Before the Court is the defendants' motion to compel discovery (Docket No. 17).

The plaintiff, Willie Frank Williams ("Williams"), commenced this action on May 31, 2011, alleging that he was denied adequate medical attention while incarcerated in an Ontario County correctional facility in violation of his civil rights pursuant to 42 U.S.C. §1983. (Docket No. 1).¹ After the plaintiff filed a variety of supplemental complaints (Docket Nos. 8 and 10), he was directed to file an Amended Complaint containing all of his claims. (Docket No. 9). The plaintiff filed an Amended Complaint on June 29, 2012 (Docket No. 11). The complaint was served upon the defendants, who filed an answer on August 20, 2012. (Docket No. 15). A scheduling order containing dates for the completion of discovery and pretrial proceedings was

¹ The plaintiff also commenced a second action, Civil No. 11CV773S, alleging similar claims. The two cases were consolidated into this action. (Docket No. 7).

issued on August 21, 2012. (Docket No. 16).

On February 4, 2013, the defendants filed a motion to compel the plaintiff to respond to various discovery demands. (Docket No. 17). The defendants assert that the plaintiff has failed to provide initial disclosures as required by Rule 26 of the Federal Rules of Civil Procedure (Docket No. 17 at ¶ 13); and that the plaintiff also failed to respond to defendants' document demand (Docket No. 17 at ¶¶ 15-17). The defendants seek sanctions, including attorneys, pursuant to Rule 37 of the Federal Rules of Civil Procedure, for the costs incurred in making the motion to compel. (Docket No. 17 at ¶ 23).

The court directed the plaintiff to respond to the motion by February 28, 2013. (Docket No. 18). The plaintiff did not respond to the motion, but instead, filed a motion seeking the appointment of counsel. (Docket No. 21). The court declined to appoint counsel for the plaintiff, but extended the plaintiff's time to respond to the motion to compel to June 14, 2013. (Docket No. 22). The plaintiff failed to respond to the motion to compel by June 14, 2013 or to otherwise contact the Court with respect to this case. The defendants have advised the Court that the plaintiff has still failed to provide discovery in this matter. (Docket No. 24).

The Court directed that the plaintiff respond to the motion to compel on or before February 28, 2013. (Docket No. 18). The plaintiff has failed to respond to the motion, and has not requested additional time to do so.

The motion to compel is granted. The plaintiff shall provide initial disclosures as required under Rule 26 on or before August 30, 2013. The plaintiff shall respond to the defendants' demand for documents on or before August 30, 2013. THE PLAINTIFF IS ALSO ADVISED THAT THE FAILURE TO PROVIDE DISCOVERY IN THIS CASE OR TO

OTHERWISE COMPLY WITH THIS PRETRIAL ORDER MAY RESULT IN THE
COMPLAINT BEING DISMISSED BASED UPON A FAILURE TO PROSECUTE
PURSUANT TO RULE 41 OF THE FEDERAL RULES OF CIVIL PROCEDURE.

The defendants' motion for attorneys fees pursuant to Rule 37(a)(5) is also granted. Rule 37(a)(5) provides:

If the Motion Is Granted (or Disclosure or Discovery Is Provided After Filing). If the motion is granted--or if the disclosure or requested discovery is provided after the motion was filed--the court **must**, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees.

The plaintiff was afforded multiple opportunities to respond to the instant motion which included the request for sanctions and attorneys fees. The plaintiff failed to respond in any way. The plaintiff has not demonstrated, and the record does not reflect, any circumstances justifying the plaintiff's failure to respond to the discovery requests, or warranting an exception from Rule 37(a)(5). **The defendants shall submit an affidavit, including contemporaneous time records, outlining the costs and fees incurred in making the instant motion by August 2, 2013. The plaintiff shall respond to the fee application on or before August 30, 2013. The matter will be deemed submitted without oral argument unless otherwise determined upon review of the papers.**

So Ordered.

/s/ Hugh B. Scott

United States Magistrate Judge
Western District of New York

Buffalo, New York
July 26, 2013